IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23799 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHIVCHEM INDUSTRIES - Petitioner(s)
Versus
ALLWIN CHEMICALS AND PHARMACE-UTICALS - Respondent(s)

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Appearance :
MR KC TRIVEDI for Petitioner(s) : 1,
MR CH VORA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 22/03/2007

ORAL JUDGMENT

The petitioner has challenged the order dated 6th September,2005 passed by the learned Judge of the Small Causes Court, Ahmedabad below Ex.3 in

Restoration Application No.508/03.

2. Shortly stated, facts leading to the present petition are that the petitioner is the original plaintiff in Summary Suit No.1972/96 filed against the respondent herein seeking recovery of Rs.1,90,000/- with interest. The learned Trial Judge granted conditional leave to defend to the defendant i.e. respondent herein by an order dated 17.2.2000 on the condition that the defendant deposits a sum of Rs.50,000/-. The defendant did not comply with the condition, instead challenged the same before this Court by filing Revision Application No.524 of 2000. The plaintiff also aggrieved by the conditional leave to defend granted to the respondent herein preferred separate revision application.

It appears that initially there was stay in favour of the respondent herein against further proceedings of pending summary suit. However, after 23rd July 2001, stay was not extended. The petitioner, i.e. original plaintiff therefore moved the Trial Court for drawing a decree since the

defendant had not fulfilled the condition which would have permitted him to defend the suit. It is the case of the petitioner that after notifying the suit on a couple of occasions and awaiting response from the defendant, learned Judge granted the decree by an order dated 25th October 2001. It may be noted that this was an ex-parte decree since the defendant had not participated before the Trial Court while the order was being passed. For a substantial time after the decree came to be passed, since the defendant did not deposit the decretal amount of Rs.6,93,000/-, the petitioner original-plaintiff filed execution proceedings and the executing Court on 20th June 2002 issued a jangam warrant against the defendant. The defendant, therefore, upon service of warrant issued seven post dated cheques to cover the decretal amount.

The defendant,however, did not honour the cheques and instead filed Restoration Application No.338/02 before the Civil Court seeking to restrain the petitioner from encashing the cheques and also requesting for setting aside the ex-parte decree.

After hearing both sides, the Trial Court by the impugned order recalled the earlier decree passed in favour of the petitioner-plaintiff and allowed the restoration application of the defendant on the condition that he deposits a sum of Rs.50,000/- within two weeks. It is stated that such sum had been deposited within the time permitted.

3. Having heard the learned advocates for the parties, I find that the defendant cannot be permitted to suffer permanently by re-activating the ex-parte decree as prayed for by the petitioner, nevertheless, the condition for recalling the ex parte decree as imposed by the Trial Court need some revision. It may be recalled that the summary suit was filed way back in the year 1996. Till 2001, of course, under interim direction of this Court, the defendant had not deposited the conditional amount of Rs.50,000/- which would have enabled the defendant to defend the suit. After July 2001, defendant took no care to ensure that the interim direction by this Court is extended. The plaintiff was, therefore,

compelled to move an application before the Trial Court seeking decree in terms of the summary suit. This decree was granted in absence of the defendant. For nearly 10 months thereafter also, the defendant took no steps to approach the civil court and to seek restoration. When the executing court issued jangam warrant, the defendant issued several cheques to cover the decretal amount. Immediately thereafter, the defendant moved the Trial Court seeking restraint against the plaintiff from encashing the cheques and for restoring the suit. This application was allowed by the impugned order passed in the year 2005. Thus the summary proceedings which should have been expeditiously concluded did not even commence properly for nearly ten years. Much of the blame for the same must lie on the doorsteps of the defendant. Initially, condition of deposit of Rs.50,000/- was imposed . To recall the ex-parte decree and thereafter to permit the defendant to defend suit in one single deposit of Rs.50,000/- therefore would be wholly unjust. Considering that the summary suit was filed in the year for a sum of Rs.1,90,000/- and also considering

that a decree though ex parte was passed in the year 2001, for a sum of Rs.6,93,000/-, it is directed that the defendant i.e. present respondent shall deposit a further sum of Rs.1 lac within six weeks from today. The defendant is present in the Court. It will, therefore not be necessary to serve this order on him. Only after the defendant deposits the said sum, he will be permitted to further defend the suit. For a period of six weeks from today, the Trial Court shall not proceed further with the suit.

4. With the above directions, the petition is allowed in part and deposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)